

HOUSE No. 607

By Mr. Murphy of Lowell, petition of Kevin J. Murphy and others
for legislation to establish a drug control court. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Kevin J. Murphy
Thomas A. Golden, Jr.

David M. Nangle
Steven C. Panagiotakos

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE CREATION OF A DRUG COURT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Massachusetts General Laws Chapter 212, is hereby amended
- 2 in Section 6 by inserting at the end thereof the following:—
- 3 (a) The District Court Department for each county of the Com-
- 4 monwealth is hereby authorized to establish and administer a
- 5 department to be known as “the Drug Court” whose purpose it
- 6 shall be to administer and supervise pretrial substance abuse inter-
- 7 vention programs for persons charged with a crime, before or after
- 8 any information has been filed or an indictment has been returned
- 9 in the District Court. Such programs shall provide appropriate
- 10 substance abuse counseling, education, supervision, and medical
- 11 and psychological treatment as available and when appropriate for
- 12 the persons released to such programs.
- 13 (b) Any person who (1) has no prior felony conviction and
- 14 (2) is currently before the court to answer charges dealing with a
- 15 nonviolent felony or misdemeanor and (3) has not previously par-
- 16 ticipated in the aforementioned pretrial intervention program to be
- 17 established by this act and (4) is not currently being charged with
- 18 crimes pertaining to the manufacture, sale, delivery or trafficking
- 19 of controlled substances of any classification as defined under the
- 20 applicable, established laws of the Commonwealth is eligible for

21 admission into the pretrial substance abuse intervention program
22 upon approval by the chief justice of the District Court in the pre-
23 siding county for a period of not less than one year in duration.
24 Admission into such program can be requested on the motion of
25 either party or on the court's own motion. However, if the prose-
26 cuting district attorney has reason to believe that the facts and cir-
27 cumstances of the case suggest the defendant's involvement in the
28 manufacture, sale, delivery or trafficking of any controlled sub-
29 stance, the court shall hold a preadmission hearing. If the prose-
30 cuting district attorney establishes, by a preponderance of the
31 evidence at such hearing, that the defendant was involved in the
32 manufacture, sale, delivery or trafficking of any controlled sub-
33 stance, the court shall deny the defendant's admission into a pre-
34 trial intervention program.

35 As used in this subsection, "nonviolent felony or misdemeanor"
36 excludes arson; sexual battery of any manner; robbery; kidnap-
37 ping; aggravated child abuse; aggravated assault; murder;
38 manslaughter; aggravated battery; and armed burglary. In no case,
39 however, shall any individual be released to the pretrial interven-
40 tion program unless, after consultation with his attorney or one
41 made available to him/her if he/she is indigent, he/she has volun-
42 tarily agreed to such program and has knowingly and intelligently
43 waived his/her right to a speedy trial for the period of his diver-
44 sion to the Drug Court.

45 (c) The criminal charges against an individual admitted to the
46 program shall be continued without a final disposition for a period
47 of ninety days from the date the defendant was released to the pre-
48 trial intervention program if the defendant's participation in the
49 program is deemed to be satisfactory by the judge presiding over
50 the case in Drug Court. The criminal charges may be continued
51 without final disposition for an additional ninety days upon the
52 approval of the court following request by the program adminis-
53 trator provided that said request be accompanied with the consent
54 of the prosecuting district attorney and provided that the defen-
55 dant's participation in the program has been deemed to be satis-
56 factory by the court following recommendations by the program
57 administrator and district attorney.

58 (d) Resumption of pending criminal charges may be requested
59 by the district attorney at any time if the intervention program

60 administrator or the prosecuting district attorney has reason to
61 believe that such defendant is not in strict compliance with the
62 obligations imposed upon the defendant as a condition to his/her
63 participation in the program or if the public interest so requires.

64 If the district attorney has reason to believe that the defendant
65 is not in strict compliance with program's guidelines, then he/she
66 shall make a motion to the judge presiding over the Drug Court to
67 initiate normal prosecutorial procedures. Following the filing of
68 such a motion, a hearing shall be scheduled before the presiding
69 "Drug Court" judge who shall then issue an order regarding the
70 proposed resumption of criminal procedure.

71 (e) At the end of the intervention program period, the program
72 administrator shall recommend one of the following courses of
73 action with regard to the defendant's situation:

74 (1) that the criminal case revert to the established prosecutorial
75 procedures for the particular crime in question in instances where
76 the defendant's participation in the program has been deemed to
77 be unsatisfactory;

78 (2) that the defendant is in need of further supervision under the
79 guidelines set forth with the Drug Court; or

80 (3) that dismissal of charges without prejudice shall be entered
81 in instances in which prosecution is not deemed necessary.

82 The court shall then consider the recommendation of the pro-
83 gram administrator and the recommendation of the prosecuting
84 district attorney as to the disposition of the pending criminal
85 charges. The court shall then determine, by written finding,
86 whether the defendant has successfully completed the pretrial pro-
87 gram. If the court finds that the defendant has not successfully
88 completed the pretrial intervention program, the court may order
89 the defendant to continue in education and treatment for a deter-
90 mined length or may order that the criminal charges revert to the
91 established prosecutorial procedures for the particular crime(s) in
92 question. The court shall dismiss the criminal charges upon a
93 finding that the defendant has successfully completed the pretrial
94 intervention program.

95 (f) The Chief Justice in each District Court may appoint an
96 advisory committee for the pretrial intervention program com-
97 posed of the Chief Justice or his/her designee, who shall serve as
98 chairman; the district attorney, the public defender, and the pro-

99 gram administrator, or their designees; and such other persons as
100 the chairman deems appropriate. The committee may also include
101 persons representing any other agencies to which defendants
102 released to the pretrial intervention program may be referred.
103 (g) The District Court department may contract for the services
104 and facilities necessary to operate pretrial intervention programs.